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Individually and as the Personal Representative of
HARRY HOLZHAUER (DECEASED)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 13 2862

Case No.

**COMPLAINT FOR WRONGFUL
DEATH**

DEMAND FOR JURY TRIAL

MARY HOLZHAUER, Individually
and as the Personal Representative of
HARRY HOLZHAUER, DECEASED,

Plaintiff,

v.

DAVID P. RHOADES, an Individual,
and DOES 1-10, Inclusive,

Defendants.

COMES NOW Plaintiff MARY HOLZHAUER ("Plaintiff"), Individually and as the
Personal Representative of HARRY HOLZHAUER (DECEASED)(hereinafter "Decedent"), and
complains of Defendant David P. Rhoades ("Defendant Rhoades") and alleges in this
Complaint as follows:

I.

INTRODUCTORY ALLEGATIONS

1. This is a maritime wrongful death claim arising out of a marine casualty which
occurred on San Francisco Bay in the territorial waters of the State of California, and the incident

1 giving rise to this lawsuit had an actual impact on maritime commerce, involved a traditional
2 maritime activity, and therefore is subject to the Admiralty and Maritime Jurisdiction of this Court,
3 28 U.S.C. §1331 and 28 U.S.C. §1333, and supplemental jurisdiction (pendant and ancillary
4 jurisdiction) pursuant to 28 U.S.C. §1367. This Court also possesses diversity jurisdiction over the
5 claims asserted herein pursuant to 28 U.S.C. §1332 because this is an action between citizens of
6 different states as set forth more fully below and the matter in controversy exceeds \$75,000
7 exclusive of interest and costs.

8 2. Decedent died on February 16, 2013 as a result of injuries he suffered while a
9 passenger aboard a recreational vessel owned, operated, controlled and managed by Defendant
10 Rhoades, and while navigating on San Francisco Bay and within the territorial limits of the County
11 of Marin.

12 3. Plaintiff is and Decedent was a resident of Tigard Oregon at all relevant times herein.
13 Plaintiff appears in and prosecutes this action as the Personal Representative of Decedent and on
14 behalf of all beneficiaries and other individuals who are entitled to compensation under the
15 controlling law. Plaintiff is or will during the pendency of this action be the duly appointed
16 Administrator and Personal Representative of Decedent's estate by order of the Courts of the State
17 of Oregon.

18 4. Defendant Rhoades is an individual who was and is a resident of the State of
19 California, County of Marin, and was at the time of the accident the legal owner of a certain
20 recreational vessel (The "Rhoades Vessel") involved in the collision with the Golden Gate Ferry
21 SAN FRANCISCO. Plaintiff is informed and believes, and thereon alleges, that the Rhoades Vessel
22 and the Ferry SAN FRANCISCO are, or will be, while this action pending, within this judicial
23 district. Plaintiff does not know the true names and capacities, whether corporate, associate,
24 individual or governmental, of the defendants sued herein under the fictitious names of DOES 1-10,
25 and Plaintiff prays leave to amend this complaint to allege said true names and capacities when
26 ascertained. All such DOE defendants, if any, are residents of the State of California, and none of
27 them are domiciled in the State of Oregon. Plaintiff is informed and believes and thereon alleges
28

1 that each of the defendants designated herein as "DOES 1-10" are negligently responsible in some
2 manner for the death of Decedent. At all relevant times, Defendant Rhoades and DOES 1-10, were
3 the agents, servants, employees and/or representatives of each other and were acting within the
4 course and scope of such employment.

5 5. The Rhoades Vessel was at all relevant times afloat upon the navigable waters of the
6 San Francisco Bay and within the territorial waters of the State of California. At the time of the
7 accident Defendant Rhoades was aboard and at all times in charge of the Rhoades Vessel and was at
8 all times privy to all of Decedent's actions, and at all times made all navigational decisions and
9 course selections, and remained at all times legally responsible for the operation and control of the
10 Rhoades Vessel.

11 6. At all times herein mentioned, Defendant Rhoades owned, operated, managed,
12 maintained, controlled, chartered and navigated the Rhoades Vessel and at all times herein
13 mentioned, was personally responsible for undertaking and discharging the duties and obligations
14 described herein, and all acts and/or omissions leading to and causing Decedent's death were, in
15 addition to the acts and omissions of the operators of the Ferry SAN FRANCISCO, his personally.

16 7. The accident during which Decedent died on February 16, 2013 occurred when the
17 Rhoades Vessel was involved in the collision with the Golden Gate Ferry SAN FRANCISCO. At all
18 relevant times Defendant Rhoades operated or allowed the Rhoades Vessel to be operated in an
19 unsafe manner (given the prevailing traffic, weather, lighting and other conditions) and in a manner
20 that resulted, in addition to the acts and omissions of the operators of the Ferry SAN FRANCISCO,
21 in the collision with the Ferry SAN FRANCISCO. Each of theses conditions were personally
22 known, or should have been known, to Defendant Rhoades.

23 8. Notwithstanding these conditions, and the knowledge and informational gathering
24 capabilities available to Defendant Rhoades, the owner and captain deliberately decided to and
25 thereafter did take actions that resulted, in addition to the acts and omissions of the operators of the
26 Ferry SAN FRANCISCO, in the collision with the Ferry SAN FRANCISCO and Decedent
27 suffering grievous injuries and thereafter dying of such injuries.

1 II.

2 **FIRST CLAIM FOR RELIEF**

3 (Wrongful Death Action for Pecuniary and Non-Pecuniary Damages under the General Maritime
4 Law)

5 9. Plaintiff refers to and by that reference incorporates as though fully set forth herein
6 each and every allegation contained in paragraphs 1 through 8, above.

7 10. Defendant Rhoades knew, or reasonably should have known, that operating the
8 Rhoades Vessel in the manner that it was being operated at the time of the collision, given the
9 prevailing traffic, weather, lighting and other conditions, created a material risk of collision with
10 another vessel, including a large commercial vessel such as the Ferry SAN FRANCISCO, and was
11 guilty of outrageous conduct owing to gross-negligence, and wanton and reckless indifference to the
12 lives of the others aboard.

13 11. This marine casualty was, in addition to the acts and omissions of the operators of the
14 Ferry SAN FRANCISCO, legally caused by the negligence of Defendant Rhoades, including, but
15 not limited to, the following:

- 16 (a) Knowingly operating, or allowing the Rhoades Vessel to be operated, in the manner
17 that it was being operated at the time of the collision, wherein, given the prevailing
18 traffic, weather, lighting and other conditions, such operation created a material risk
19 of collision with another vessel, including a large commercial vessel such as the Ferry
20 SAN FRANCISCO;
- 21 (b) Failing to warn Decedent before taking the vessel into the area of extreme risk;
- 22 (c) Failing to maintain or post an effective lookout on his vessel;
- 23 (d) Failing to exercise ordinary care under the circumstances to ensure that Decedent
24 would be able travel aboard the vessel with reasonable safety;
- 25 (e) Failing to properly equip the Rhoades Vessel for her voyage; and
- 26 (f) Failing to use reasonable care in the navigation, operation and control of his vessel
27 and allowing the vessel to collide with the Ferry SAN FRANCISCO.

28 12. As a legal result of the aforesaid negligent acts and omissions, among others,

1 Defendant Rhoades breached the duty of care owed to Decedent. As a result of these breaches of
 2 duty, in addition to the acts and omissions of the operators of the Ferry SAN FRANCISCO,
 3 Decedent sustained grievous physical injuries which ultimately resulted in his death.

4 13. Decedent was in excellent physical condition and was the loving and devoted
 5 husband of Plaintiff and a father and grandfather. As a direct result of the negligent acts and
 6 omissions of Defendant Rhoades, in addition to the acts and omissions of the operators of the Ferry
 7 SAN FRANCISCO, Decedent's heirs and dependents have suffered the permanent loss of his
 8 financial and other support, services, nurture, care, advice, and example, all to their pecuniary
 9 damage, and the permanent loss of his love, affection, comfort, company, society, and consortium,
 10 all to their non-pecuniary damage, both in an amount to be determined by the trier of fact at the time
 11 of trial.

12 14. Decedent's heirs have also suffered expenses and losses of other types, including
 13 funeral expenses, legal expenses relating to probate and other matters, and other items in an amount
 14 to be determined by the trier of fact at the time of trial.

15 III.

16 PRAYER FOR RELIEF

17 WHEREFORE, Plaintiff, individually and as the Personal Representative of Decedent and
 18 his Estate, prays judgment as follows:

- 19 1. That process in due form of law, according to the practices of this Honorable Court in
 20 causes of admiralty and maritime jurisprudence, may issue against the Rhoades
 21 Vessel, her engine, tackle, gear and appurtenances, or any limitation fund, and that all
 22 persons having or claiming any interest therein be cited to appear and answer, under
 23 oath, all and singular the matters; that Plaintiff have a judgment for the damages
 24 alleged herein against such vessel, with interest and costs; and that Rhoades Vessel be
 25 condemned and sold to satisfy Plaintiff's judgment;
- 26 2. That process in due form of law according to the practice of this Honorable Court
 27 issue against Defendant Rhoades, citing him to appear and answer all and singular the
 28

1 matters aforesaid;

2 3. For pecuniary and non-pecuniary wrongful death damages;

3 4. For funeral and burial expenses;

4 5. For property damage according to proof at trial;

5 6. For pre-judgment interest;

6 7. For costs of suit and attorney fees to the extent recoverable; and

7 8. For such other and further relief as this Honorable Court deems just and proper.

8 DATED: June 19, 2013

BRODSKY MICKLOW BULL & WEISS LLP

9
10 By: 

Edward M. Bull III

11 Attorneys for Plaintiff MARY HOLZHAUER,
12 Individually and as the Personal Representative of
13 HARRY HOLZHAUER (DECEASED)

14
15 **ENDORSEMENT**

16 By way of endorsement to this Claim, Plaintiff demands a jury trial on all of causes of action
17 pursuant to the legal authorities addressing the right to trial by jury in mixed admiralty, state law
18 and diversity cases.

19 DATED: June 19, 2013

BRODSKY MICKLOW BULL & WEISS LLP

20
21 By: 

Edward M. Bull III

22 Attorneys for Plaintiff MARY HOLZHAUER,
23 Individually and as the Personal Representative of
24 HARRY HOLZHAUER (DECEASED)